WORKPLACE HEALTH, SAFETY AND COMPENSATION REVIEW DIVISION
(WHSCRD)

Annual Performance Report
2013-14

Newfoundland Labrador

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MESSAGE FROM THE CHIEF REVIEW COMMISSIONER

In accordance with the *Transparency and Accountability Act* and the *Workplace Health, Safety and Compensation Act* (the *Act*), I am pleased to present the Workplace Health, Safety and Compensation Review Division's (WHSCRD) Annual Performance Report for 2013-14. As Chief Review Commissioner of the WHSCRD, I am responsible for the preparation of this report and accountable for the results contained within it.

It has been more than one year since my appointment as the WHSCRD's first, full-time Chief Review Commissioner. During this time, I have had the opportunity to review many interesting and complex cases and to hear varying arguments with respect to numerous sections of the *Act* and policies. From this, I have made many observations with respect to the review process and the workers' compensation system generally. Of particular interest is the degree to which many provisions of the *Act* appear to be misunderstood by parties and how necessary it is for all parties to be mindful of the role of the WHSCRD within the workers' compensation system. By providing insight and clarification on that role through written decisions, I hope parties that are served by the WHSCRD benefit from a greater understanding of the WHSCRD's primary function.

From a caseload perspective this reporting period was both challenging and successful, as the WHSCRD worked towards managing its caseload in a timely manner while meeting its set objectives for 2013-14. Due to the extensive efforts by staff and Review Commissioners, I am pleased to report that efficiency and overall service levels have all seen considerable improvements in both the number of hearings conducted and decisions rendered compared to the previous year.

Further, there were 304 hearings held throughout the Province and 305 decisions rendered in 2013-14, in addition to the coordinating efforts of staff for an additional 108 hearings which were postponed, rescheduled or subsequently withdrawn by parties. These statistics demonstrate that the WHSCRD is currently scheduling, hearing and deciding appeals effectively while continuing to provide quality services for our clients.

I would like to express thanks to those clients who have worked collaboratively with us in 2013-14, as this has contributed greatly to our caseload success. I wish to also acknowledge and thank Review Commissioners and staff of the WHSCRD for their commitment, professionalism and ongoing contribution to the delivery of services to injured workers and employers. As Commissioners and staff, we look forward to continuing to provide a high standard of client service and look forward to another productive year in 2014-15.

Marlene Hickey

Marlene A. Hickey
Chief Review Commissioner

OVERVIEW

INTRODUCTION

The Workplace Health, Safety and Compensation Review Division (WHSCRD) is the final level of review within the workers' compensation system in Newfoundland and Labrador. The WHSCRD is responsible for the review of decisions of the Workplace Health, Safety and Compensation Commission (the Commission). The WHSCRD may review such issues as:

- Compensation and medical aid benefits;
- Rehabilitation and return to work services and benefits;
- Employers' assessments and industry classifications; and
- The obligations of an employer and a worker with respect to early and safe return to work and re-employment efforts.

FINANCIAL INFORMATION

Funding for the operations of the WHSCRD is provided by the *Injury Fund* pursuant to s.25 of the *Act*. The WHSCRD's budgetary allocations, however, are contained within the overall budget for Service NL, Government of Newfoundland and Labrador. As per the *Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for the Year Ended 31 March 2014*, expenditures for the WHSCRD in 2013-14 were $1,038,309. Please refer to page 22 for more detailed financial information.

REVIEW COMMISSIONERS

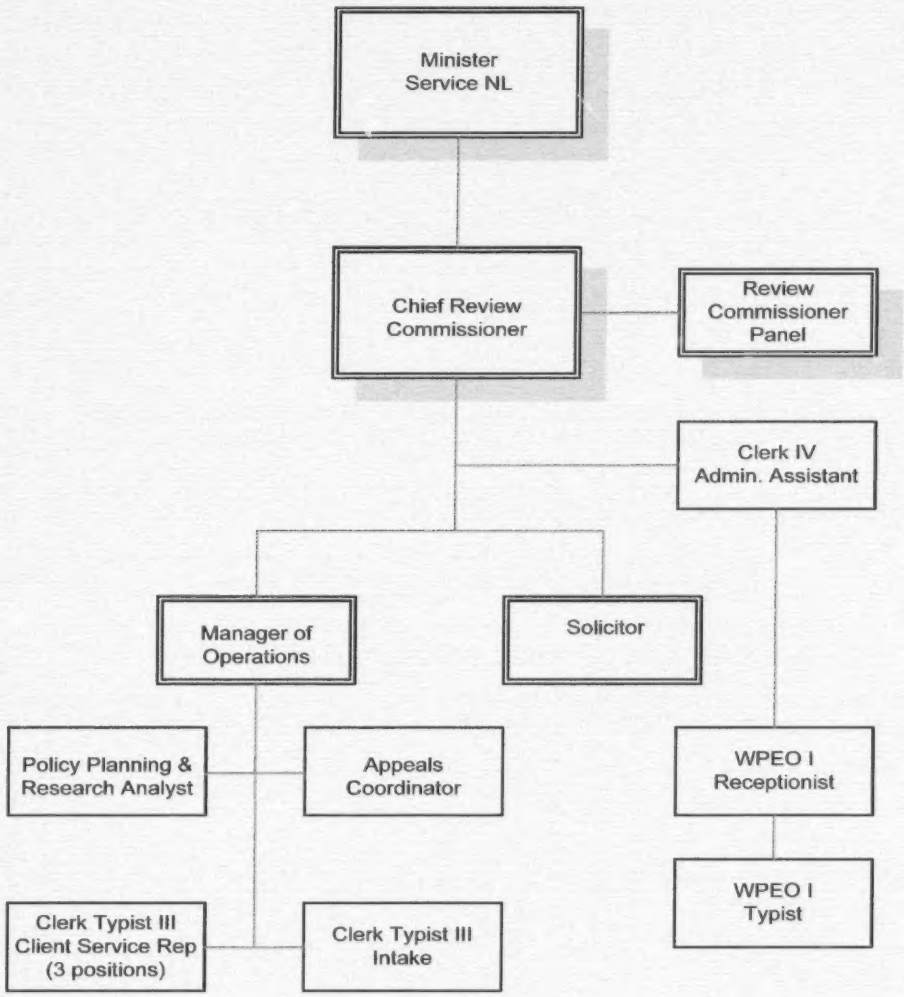
The WHSCRD has a Chief Review Commissioner and a Panel of Review Commissioners. Up to seven Review Commissioners, including the Chief Review Commissioner, may be appointed to the WHSCRD. Review Commissioners conduct hearings in St. John's, Gander, Grand Falls-Windsor, Corner Brook, Happy Valley-Goose Bay and Labrador City.

As of March 31, 2014, the WHSCRD's Panel of Review Commissioners consisted of Marlene Hickey as Chief Review Commissioner, with E. Bruce Peckford, Lloyd Piercey, Margaret Blackmore, Gordon Murphy and Peter Budgell as Review Commissioners. Please refer to page 23 for additional information regarding Review Commissioners.

WHSCRD STAFF

The WHSCRD currently employs eleven staff (10 female and 1 male) in its office located in the Dorset Building, at 6 Mount Carson Avenue in Mount Pearl, NL.

WHSCRD ORGANIZATIONAL CHART



MANDATE

The mandate of the WHSCRD is to review decisions of the Commission to ensure compliance with the *Workplace Health, Safety and Compensation Act* (the *Act*) and *Regulations*, as well as with the policies of the Commission. The WHSCRD is also mandated to direct appropriate remedies where necessary.

VISION

The WHSCRD's vision statement expresses its goals, identifies its service areas and provides direction and inspiration. Shared with its clients and stakeholders, the following vision statement provides an understanding of how the WHSCRD will effectively carry out its operations:

The vision of the WHSCRD is an environment where workers and employers participate in an independent, timely and fair review process anchored in a culture of exceptional client service.

VALUES

Values are the guiding principles which describe the culture of an organization. The culture of the WHSCRD is one which promotes exceptional client service in an environment where employees are supported in their professional and individual pursuits.

The following core values will guide our behavior and judgment in our interactions with clients on a daily basis:

Independence	Each person will provide services to clients in a manner that is fair, equitable, and free of bias.
Respect	Each person will treat clients and each other with courtesy and understanding while recognizing other views and opinions.
Professionalism	Each person will demonstrate the highest level of conduct by serving clients in a manner that is timely, competent and objective.
Quality	Each person will endeavour to consistently provide services to clients in an ethical and proficient manner.

LEGISLATION

The *Workplace Health, Safety and Compensation Act*, RSNL1990 CHAPTER W-11, Part II – Appeals, Sections 21 to 37 provide the legislative provisions for the WHSCRD.

LINES OF BUSINESS

The WHSCRD offers the following services to its clients:

Review of Commission Decisions

- The WHSCRD processes review applications submitted by injured workers, their dependents and employers in the province, as well as coordinates a review process that includes a hearing before a Review Commissioner concluding with a final written decision.

Information Services

- The WHSCRD provides information services to its clients through its website at www.gov.nl.ca/whscrd, the web-based distribution of its decisions, researching workers' compensation issues and collecting and maintaining statistical information relative to the review process.

HIGHLIGHTS AND ACCOMPLISHMENTS

In providing quality services to workers and employers of the Province, and while continuing to improve its practices and procedures, the WHSCRD has completed the following initiatives in 2013-14:

Case Processing

The WHSCRD is committed to providing workplace parties with a timely and effective review process, however, in recent years various factors have contributed to the rise in the number of cases waiting to be heard. Many parties advised they were not available to proceed with their case when contacted for various reasons. Some parties required additional time to gather relevant material, were waiting on representation, or they were waiting on new evidence to be reviewed at the Commission level. Also, from 2010 to 2012 the expiry of existing Review Commissioner appointments and pending new appointments, impacted the availability of WHSCRD Review Commissioners to conduct hearings throughout the Province.

Due to extensive efforts by the WHSCRD in advancing cases to the hearing stage, and with an increase in the availability of Review Commissioners, the WHSCRD was able to significantly reduce the number of cases waiting to be heard in 2013-14. Over the past year, despite coordinating work for an additional 108 cases which were either postponed, rescheduled or subsequently withdrawn by the workplace parties, the WHSCRD has concluded 304 appeal hearings, many of which involve complex issues with the added challenges of scheduling multiple parties.

During 2013-14, the WHSCRD held 39 percent more hearings and rendered 34 percent more decisions than in 2012-13. This means the Review Division is not only meeting current demands, but is also addressing older applications which have been outstanding from previous years as part of its backlog.

Client Service Manual

In March of 2014, the WHSCRD launched its *Client Service Manual* which sets out the WHSCRD's practices and procedures to ensure an efficient and fair review process. The *Client Service Manual* serves as a reference guide to enhance clients' understanding of the review process and provides information on the various stages of review from application to final decision, and at the post-decision stage. The *Client Service Manual* is accessible on the WHSCRD's website at www.gov.nl.ca/whscrd and in hardcopy from the WHSCRD's office.

Statutory Review

The *Statutory Review Committee (SRC)* on the *Workplace Health, Safety and Compensation Act* is mandated to review the provincial workers' compensation system and to bring forward its recommendations to Government. As part of its consultations, the SRC met with the WHSCRD on July 16, 2013 to discuss matters respecting the appeals process and to identify opportunities for improved service delivery to clients. The WHSCRD also presented the SRC with a written submission outlining its recommendations for enhancements to the appeals process and the governing section of the *Act – Part II Appeals*.

Review Commissioner Professional Development

As single adjudicators, it is important that Review Commissioners to come together as a group to participate in ongoing professional development. Review Commissioners participated in two professional development workshops in May and December of 2013 provided by WHSCRD's administrative staff. The workshops concentrated on noteworthy issues that come before Review Commissioners and the decision-making and decision-writing processes.

Privacy Workshop

While collecting, handling and retaining information for the review process, the WHSCRD complies with the *Access to Information and Protection of Privacy Act* (the *ATIPPA*). The WHSCRD is highly aware of the sensitive nature of the information it collects and maintains for the purpose of processing *Request for Review* applications and of its responsibility to ensure the integrity of that information. In addition to receiving ongoing information on the protection of privacy throughout the year, staff of the WHSCRD also participated in a privacy workshop in April 2013 to enhance their knowledge of the *ATTIPA* and to emphasize privacy-best practices.

Occupational Health and Safety

The WHSCRD is committed to providing and maintaining a safe and healthy work environment for its employees. In September 2013, the WHSCRD formed its first Occupational Health and Safety (OHS) Committee, as previously the WHSCRD did not have the required number of employees to form a Committee. The OHS Committee's focus is to provide health and safety information while promoting measures to ensure the health, safety and welfare of employees while at work.

2011-2017 Mission

The following Mission Statement identifies priorities of the WHSCRD for 2011-17 and supports Government's strategic direction of service excellence through enhanced program and service delivery.

Mission: **By 2017, the WHSCRD will have expanded its client service framework through the creation and implementation of service standards.**

Measure: **Client service framework is expanded.**

Indicators:

- **Service standards needs are identified.**
- **Quality decision-making process initiated.**
- **Service standards are implemented.**

The WHSCRD's Mission Statement covers two planning cycles: 2011-14 and 2014-17. During the first cycle (2011-2014), the WHSCRD successfully met its planning objectives by focusing internally on its administrative supports to develop and implement service standards that are responsive to clients' needs.

- In 2011-12, an Organizational Development and Training Strategy was developed to assist employees achieve their individual career goals and to support the WHSCRD's Mission with respect to service standards. During the development phase, the WHSCRD examined its processes and identified the necessary core competencies required to enhance client services and provide administrative support to Review Commissioners. The Centre for Learning and Development (CLD) was also consulted for their input and advice with regard to the learning plan process. The outcome was the initiation of an Organizational Development and Training Strategy that provides employees with an outline for professional development opportunities while supporting the delivery of services.

- Recognizing that Review Commissioner professional development is also essential to the review process, the WHSCRD achieved its 2012-13 objective through the creation of a professional development program that promotes a standard of competency for both new and senior Review Commissioners. The program reflects a diverse collection of professional development opportunities to enhance Review Commissioners' expertise, consisting of:

    - a formal orientation program for newly appointed Review Commissioners;
    - the development of a competency-based learning plan;
    - the identification of professional development opportunities for Review Commissioners through outsourced seminars and conferences; and
    - the design and implementation of an in-house training model for all Review Commissioners.

- To enhance the decision-making process and to further expand its client services, the WHSCRD has successfully met its objective for 2013-14 with the development of a *Decisions Standards Guide*. The *Guide's* purpose is to implement standards surrounding the decision-making process in order to provide clients with decisions that are clear, consistent and of the highest possible quality. Refer to page 10 of this report for a further discussion on the 2013-14 objective.

During the next phase of the Mission (2011-17), the WHSCRD will continue to remain focused on the development and expansion of a client service framework that provides the highest level of service possible to workers and employers, while maintaining a fair and impartial review process. Over the course of the next three fiscal years, the WHSCRD will further expand its client service framework by concentrating on the efficient processing of Request for Review applications, improving access to decisions, and upgrading online service delivery for clients.

2013-14 OBJECTIVE

Quality Assurance

The WHSCRD recognizes the importance of quality decisions that provide sound reasoning and clearly articulate the outcome of the decision for its clients. Additionally, recent Supreme Court decisions have spoken to the duty of quasi-judicial bodies to provide clients with adequate reasons for their decisions. As a result, the WHSCRD identified quality assurance in decision-making as its key objective for 2013-14. This objective supports Government's strategic direction in the area of service excellence through the focus of quality assurance and timely access to responsive programs and services delivered by skilled and knowledgeable staff.

While Review Commissioners are responsible to independently decide the cases before them, there is also a requirement to provide supports that enable Review Commissioners to render unbiased decisions which are clear, concise and of the highest possible quality. In achieving its 2013-14 objective, the WHSCRD developed a *Decision Standards Guide* that outlines the criteria for the decision-making process. The *Guide's* purpose is to assist Review Commissioners during the drafting process and to encourage consistent decisions that are of the uppermost quality.

The *Decision Standards Guide* will also assist Review Commissioners render decisions that are easier to read and that concentrate more explicitly on the critical issues without being repetitious. This will lead to more informative decisions for the workplace parties, a more transparent and intelligible format for reviewing Courts, and where applicable, clearer and less ambiguous directions.

The following measure and related indicators outline the WHSCRD's endeavours for 2013-14:

Objective:	**By March 31, 2014, the WHSCRD will have developed a *Decision Standards Guide* to improve the quality of decisions.**

Measure: *Decision Standards Guide* is developed.

Indicators:

- ✓ Quality standards for the decision-making process are identified.
- ✓ A writing style template is developed.
- ✓ The *Decision Standards Guide* is drafted.

OBJECTIVE OUTCOMES

The *Decision Standards Guide* is a tool to not only ensure adherence to the WHSCRD's decision format with regards to grammar and style, but more importantly to assist Review Commissioners write well-reasoned decisions that provide a comprehensible explanation of 'how' and 'why' the decision was made.

The decision-making process involves clearly outlining the issues under review, identifying the relevant findings of facts drawn from the evidence, and applying the pertinent legislation and policies to the case. A well-written decision responds to the relevant submissions and arguments of the parties without being repetitious. It provides sound reasoning to support the finding of facts and provides a clear statement of the outcome and direction of the decision using consistent terminology and plain language where possible.

The following table includes the associated indicators to assist both the WHSCRD and the public in monitoring and evaluating its progress and accomplishments for 2013-14 towards developing the *Decision Standards Guide*:

INDICATORS	PROGRESS AND ACCOMPLISHMENTS
Quality standards for the decision-making process are identified.	A thorough analysis of the decision-making process was completed, resulting in the identification of the following areas associated with quality standards in the decision-making process: • the priority to clearly confirm the specific issues under review; • the importance to ensure the main arguments of the workplace parties are clearly identified and addressed in the decision; • the necessity to incorporate the correct legislation and policy into decisions; • the obligation to ensure the language of the decision is understandable for the workplace parties; • the requirement to clearly establish how the relevant evidence was weighed in accordance with the *Act*, Regulations and policies of the Commission; • the necessity to plainly and concisely articulate the outcome of the decision; and • the responsibility to clearly identify the errors, if any, made by the Commission in the decision under review.

OBJECTIVE OUTCOMES (CONTINUED)

INDICATORS	PROGRESS AND ACCOMPLISHMENTS
A writing style template is developed.	The most important role of a Review Commissioner begins once a review hearing is completed. It involves making the decision on the case and writing the reasons for the decision. While the writing style of each Review Commissioner is individual and unique, the WHSCRD developed a writing style template to ensure consistency in the decision-making process and to confirm that the key areas of the decision are addressed. The template outlines areas crucial to decision-writing, such as: • the identification of any preliminary matters; • a statement of the issues to be reviewed; • an introduction to the matter; • the statement of the parties' positions; • the finding of facts and the application of the *Act* and policies; and • the final outcome of the decision and the remedy, if applicable.
The *Decision Standards Guide* is drafted.	The WHSCRD has developed the *Decision Standards Guide* as an in-house document that provides Review Commissioners with the extra tools and supports for the decision-making process. It is divided into the following relevant sections by subject matter: • an overview of the decision-making process; • key elements of a quality decision; • a section on decision styles including the writing style template; • a section on grammar and punctuation; and • a decision-quality checklist. The *Decision Standards Guide* will ensure that decisions arising from the WHSCRD are of the highest quality possible for workplace parties. When published, these decisions will also provide important information about the review process to stakeholders and potential review participants.

OPPORTUNITIES AND CHALLENGES AHEAD

The following area of focus for the WHSCRD in the upcoming year is in keeping with WHSCRD's Mission of an expanded client service framework that is responsive to the needs of clients:

Client Information and Support

The jurisdiction of the WHSCRD under the *Act* is to review individual decisions of the Commission. Its function is not to oversee all of the Commission's management processes, but rather to determine if individual decisions of the Commission comply with the *Act*, regulations, and policies at the time they were made and with the evidence provided at that time.

A recent challenge has been the extent to which the resources of the WHSCRD are depleted on addressing issues which are not within its intended jurisdiction. On occasion, review applications are made for the purposes of discovering which documents may be in the possession of the Commission, but not disclosed until application to the WHSCRD. The review process has also been invoked occasionally for the purposes of obtaining decisions on issues which are beyond the WHSCRD's jurisdiction.

In addition, the WHSCRD has also faced challenges with clients' understanding of the Reconsideration Process. The Reconsideration Process is to allow the Chief Review Commissioner to set aside and correct a decision in which another Review Commissioner may have made a fundamental error which would cause him or her to lose jurisdiction under the *Act*. Requests for Reconsideration should state the reasons for making the request and identify any errors in law or jurisdiction that it is believed the Review Commissioner may have made in rendering his or her decision. In 2013-14, however, the WHSCRD received a high number of Requests for Reconsideration, many of which merely stated disagreement with the outcome of the decision and did not identify any errors they believed the Review Commissioner had made. The WHSCRD responded to these requests asking the parties to amend their applications and in some cases repeated requests were made to the parties, causing delays and contributing to the demands placed on the WHSCRD's limited resources.

It is, therefore, apparent that there is an ongoing requirement to provide clarity surrounding the WHSCRD's jurisdiction and role under the *Act* in order to ensure a fair, efficient and transparent process for all the parties involved. In addition to providing information on the various aspects of the review process through its *Client Service Manual*, the WHSCRD will continue to inform clients by reviewing and updating its communications tools, such as its website at www.gov.nl.ca/whscrd and its information brochures. The WHSCRD is also committed to providing assistance wherever possible with respect to the proper completion of appeal applications, understanding file documents, and communicating the role of the WHSCRD so that clients may participate effectively in the review process.

2013-14 NOTEWORTHY DECISIONS

The following WHSCRD decisions have been selected as noteworthy, as they articulate the outcome of a particular issue or the issue may be of interest to the general public and stakeholders. Additional decisions may be viewed at www.gov.nl.ca/whscrd.

Decision 13117 – *Extended Earnings Loss Benefits (EEL) – Suitable Employment and Earnings – Inability to Participate in Labour Market Re-entry (LMR) Plan – 'Factors Other' Than the Compensable Injury*; A worker sustained injuries to both wrists and was initially found to have an eight-hour workday tolerance, with restrictions. This was later revised to a four-hour per day tolerance. After LMR investigations, the worker was found capable of only one suitable direct entry option, NOC Minor 668: *Other Elemental Service Occupations*. The worker was awarded partial EEL benefits based on the finding that she possessed a four-hour per day tolerance in the single option identified.

Held: The Commission erred in interpreting and applying Policy RE-15: *Determining Suitable Employment and Earnings*. Usually the Commission must identify at least three alternatives for the purposes of exploring LMR options, including a potential LMR Plan. Policy RE-15 also contains a provision which permits the Commission to find the worker capable of working and earning in NOC 668, *Other Elemental Service Occupations* at the minimum wage, even where there are less than three options identified and *"factors other than the compensable injury"* prevent the worker from participating in a *"reasonable and feasible LMR Plan"*. This provision contains a requirement that the worker have the capacity for *"one or more of the occupations identified in the laboring and elemental minor group"*. The Commission matched the worker to the minor group without identifying which occupations within the group the worker was capable of performing. While the Commission is entitled to match workers to a group of occupations under the general provisions of Policy RE-15, and is not required to 'job match' the worker to one specific occupation, under the specific 'factors other' provision of Policy RE-15, there is an added requirement that the Commission must identify which occupation(s) within the group the worker can perform. The matter was remitted back to the Commission.

June 5, 2013 (Hickey)

Decision 13182 – *Proportionment – Extended Earnings Loss (EEL) Benefits;* A worker was awarded EEL benefits. It was found that the worker's injury involved the aggravation of a pre-existing condition, namely Degenerative Disc Disease (DDD). The worker had a work history of approximately 30 years, featuring long periods of heavy employment duties. The worker's benefits were proportioned by 75 percent, on the basis that the work injury was 'minor' and the pre-existing condition was 'moderate'. The same proportionment rating was then translated to the worker's Permanent Functional Impairment (PFI) assessment. The worker objected, arguing that his pre-existing condition had not previously caused him to miss any significant time from work.

Held: The review was allowed on both issues and the matter remitted to the Commission. The Commission erred in the interpretation and application of Policy EN-02: *Proportionment* and further erred in translating that analysis directly to the PFI assessment for the purposes of Policy

EN-01: *Permanent Functional Impairment*. The Chief Review Commissioner did not accept that the Commission is unable to proportion EEL benefits unless the worker's pre-existing condition previously disabled him from employment prior to the work injury. Section 43.1 specifically allows the Commission to proportion benefits where the worker has a pre-existing condition, disease, or disability.

However, the question of whether a proportioning factor will apply, or what proportioning rating will apply, is governed by the definitions and ratings table in Policy EN-02: *Proportionment*. The ratings table and accompanying definitions determine the particular proportioning rating.

The concept of a *"proportioning factor"* in Policy EN-02 requires a demonstration that a non-compensable condition is affecting recovery from the work injury, or the extent of the disability. This requires an examination of the combined effects of the work injury and non-compensable condition on the worker's present condition. This is the first step before a particular proportionment rating can be applied according to the definitions and ratings table.

However, the imposition of a particular proportionment rating depends on the analysis in the rating table, guided by the definitions. The definitions are tied to the expected effects of the work injury and proportioning factor, respectively, on the worker's pre-injury earnings capacity, not the actual degree of contribution to the worker's present medical condition. The purpose of Section 43.1 is to proportion two types of specific benefits, not proportion the injury itself.

The definitions and ratings table require the Commission to assess the work injury component, and the proportioning factor, individually and in isolation from the other, in order to determine the expected effects of each on the worker's earning capacity had the other not contributed to the worker's disability. By necessary implication, this includes a requirement there be findings identifying how the work injury and proportioning factor would have been 'expected' to affect the worker's earning capacity during the worker's remaining work life. The decision was overturned, as it relied heavily on the Medical Consultant's opinion without verifying that the opinion fully addressed the criteria in the Policy and the issues required by the *Act*. The PFI proportionment decision, which adopted the EEL proportionment ratings, was also set aside as a result. The matter was remitted back to the Commission for completion of the analysis in accordance with the *Act* and Policy.

September 5, 2013 (Hickey)

Decision 13248 – *Recurrence – Medical Compatibility*; A worker suffered from degenerative disc changes since 2000. The worker submitted a claim in 2010 for a gradual onset injury which was initially diagnosed as a strain, disc injury, and radiculopathy. The claim was accepted as an aggravation of a pre-existing non-compensable condition and wage loss benefits were paid for approximately six months. The worker was cleared to return to work and the claim was closed. Two months after the worker's claim was closed, the worker underwent surgery, which

was not successful. In the aftermath of the surgery and its effects, the worker submitted a claim for recurrence of the compensable injury.

Held: The review was denied. The worker had a longstanding pre-existing non-compensable condition which had become highly symptomatic prior to the work incident in 2010. There was medical evidence which suggested that the symptoms following the work incident may have been among the factors which influenced the worker to elect surgery, but there was also evidence which indicated that the need for surgery had been identified prior to the work incident taking place, and as a consequence of the pre-existing condition itself. The work incident aggravated the pre-existing condition but the aggravation was temporary, as the worker had been cleared to return to work prior to the surgery. The Review Commissioner found that the Commission did not commit an error in refusing to accept the worker's post-surgery condition as a recurrence of the compensable injury. The weight of evidence established that the worker's employment did not materially contribute to the need for surgery or for the worker's condition following the surgery, which was attributable to the nature of the worker's pre-existing condition with or without contribution from the employment.

December 4, 2013 (Piercey)

Decision 14066 – *Early and Safe Return to Work – Duty to Co-Operate;* The worker had begun, and was participating in, an Early and Safe Return to Work (ESRTW) Program. The employer vigorously pursued its own duty to co-operate. The worker's spouse suffered a heart attack, which caused the worker to interrupt the ESRTW program. The worker's treating physician recommended the worker not resume the program. The employer continued to contact the worker on an almost daily basis to the point where the worker resigned. The Commission then terminated the worker's benefits.

Held: The review was allowed and the matter remitted back to the Commission. The worker did not demonstrate a failure to co-operate. The worker remained in the program despite physical difficulties and her husband's own illness was an extenuating circumstance. The Commission erred in effectively allowing the employer to manage the ESRTW process and further failed in not investigating the circumstances of the case. The fact that an employer meets its own duty of co-operation does not automatically translate into a finding that the worker fails to meet hers. An ESTRW plan may fail without failure on the part of the employer, the worker, or the Commission. The worker was still disabled and was therefore entitled to benefits until demonstrated otherwise.

March 25, 2014 (Hickey)

2013-14 CASELOAD ACTIVITY

- Active cases are those that are either waiting on a hearing or a decision. At fiscal year end, the WHSCRD's active caseload was 249 cases. This represents a 24 percent reduction in the number of active cases to be carried forward for the same period in the previous fiscal year.

- The WHSCRD's overall annual caseload remained consistent with previous years. There were 300 Request for Review Applications filed in 2013-14, representing a slight decrease from the preceding year by 19 cases.

- Workers and their dependents filed 277 Request for Review Applications which represents 92 percent of the applications filed. Employers filed 23 (eight percent) Request for Review Applications.

- Request for Review applications may involve more than one issue and it may be necessary for the WHSCRD to provide a decision on each issue. There were 305 decisions rendered involving 378 issues under review.

- As in previous years, the top three issues under review for workers are: Extended Earnings Loss 19 percent, Claim Denied 13 percent, and Health Care Services 12 percent.

- Review Commissioners found that approximately 42 percent of the Commission's decisions, which were subject to review, were either not consistent with the *Act*, the *Regulations* and policies of the Commission, or required additional review by the Commission. In these cases, Review Commissioners allowed the appeals or referred the cases back to the Commission for further review or investigation.

- Approximately 88 percent of workers and 63 percent of employers were represented throughout the review process, based on the 305 cases finalized in 2013-14.

- The Commission has standing and may appear at review hearings any time. The Commission participated in 36 percent of hearings either through the attendance of a Hearings Officer or by their Legal Counsel.

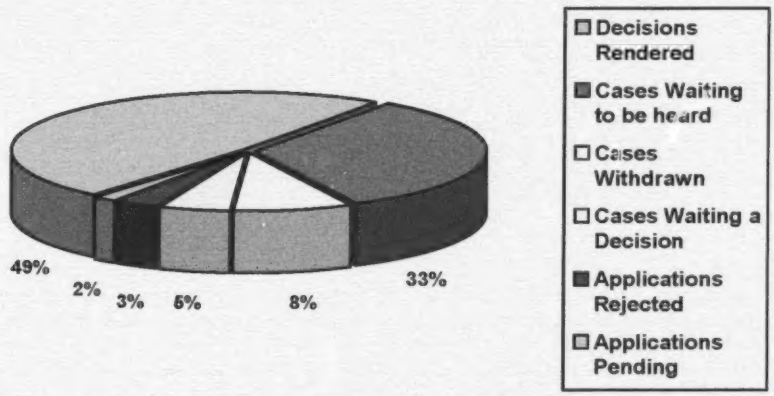
- There were 304 hearings conducted this fiscal year which represents a 39 percent increase in the number of hearings held compared to the previous year. Staff of the WHSCRD also coordinated work for an additional 108 hearings which were either postponed, rescheduled or subsequently withdrawn by the parties.

- The WHSCRD rendered 34 percent more decisions in 2013-14 than in the previous fiscal year.

2013-14 Statistical Overview

Caseload Breakdown	2013-14	2012-13
Appeals Carried Forward	327	309
New Applications	300	319
Annual Caseload	**627**	**628**
Less Finalized/Closed Cases:		
Decisions Rendered	305	227
Cases Withdrawn	52	43
Applications Rejected	21	31
Active Caseload Year End	**249**	**327**
Cases Waiting to be Heard	207	278
Cases Awaiting a Decision	32	38
Applications Pending	10	11

Caseload Breakdown (Percentage)



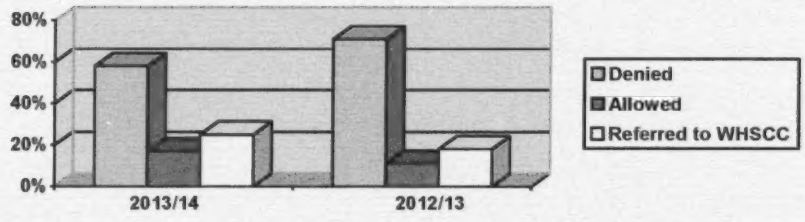
Due to rounding the total percentages may not equal 100 percent.

2013-14 STATISTICAL OVERVIEW (CONTINUED)

Monthly Hearings & Decisions	2013-14 Hearings	2013-14 Decisions	2012-13 Hearings	2012-13 Decisions
April	32	14	21	25
May	33	41	18	10
June	33	20	18	21
July	26	23	12	19
August	17	24	19	22
September	24	27	18	15
October	39	26	13	20
November	25	22	18	20
December	18	25	17	14
January	16	31	18	24
February	18	15	22	18
March	23	37	24	19
Total	**304**	**305**	**218**	**227**

Decisions by Type	2013-14		2012-13	
Denied	178	58%	162	71%
Allowed	52	17%	25	11%
Referred Back to WHSCC	75	25%	40	18%
Total	**305**	**100%**	**227**	**100%**

Decision Breakdown (Percentage)



2013-14 STATISTICAL OVERVIEW (CONTINUED)

Hearings by Region	2013-14	2012-13
St. John's	202	146
Gander	29	24
Grand Falls-Windsor	24	21
Corner Brook	49	22
Labrador	0	5
Total Hearings	**304**	**218**

Representative Profile by Type	2013-14	2012-13
Worker Self	35	26
Worker Consultant	12	7
Employer Self	29	19
Employer Consultant	49	26
Legal Counsel	7	5
Union	55	39
Members of the House of Assembly	160	122
WHSCC	108	100
Other (Relative, Friend, etc.)	18	11
Total Representatives	**473**	**355**

Note: More than one representative may be involved the review process, therefore, the number of representatives may not correlate with the number of hearings held or decisions rendered.

Reconsideration Requests by Client	2013-14				2012-13		
	Requests	Allowed	Denied	Outstanding	Requests	Allowed	Denied
Employer	4	0	0	4	1	0	1
Worker	17	1	11	5	11	0	11
WHSCC	15	2	10	3	6	0	6
Total	**36**	**3**	**21**	**12**	**18**	**0**	**18**

2013-14 STATISTICAL OVERVIEW (CONTINUED)

Issues Reviewed by Decision		Outcome		
Worker/Dependent Appeals	**Objections**	**Allowed**	**Denied**	**Referred Back To WHSCC**
Aggravation of a Pre-existing Condition	3	0	2	1
Claim Denied	45	10	23	12
Compensation Rate	12	3	6	3
Dependency Benefits	5	0	3	2
Early & Safe Return to Work	7	1	5	1
Extended Earnings Loss Benefits	65	7	34	24
Health Care Services	43	9	25	9
Industrial Disease	1	0	0	1
Industrial Hearing Loss	15	0	7	8
Internal Review Denied	1	1	0	0
Overpayment	11	3	8	0
Pension Replacement Benefit	4	1	3	0
Permanent Functional Impairment	21	2	14	5
Permanent Partial Disability	1	0	0	1
Proportionment	30	6	8	16
Recurrence	11	4	5	2
Reinstatement of Benefits	21	3	13	5
Reopening	37	2	29	6
Temporary Earnings Loss	2	0	2	0
Wage Loss Benefits	14	4	7	3
Total	**349**	**56(16%)**	**194(56%)**	**99(28%)**
Employer Appeals				
Cost Relief	2	1	0	1
Objection to a Worker's Claim	25	5	18	2
Rate Code	1	0	1	0
Re-Employment Obligations	1	0	1	0
Total	**29**	**6(21%)**	**20(69%)**	**3(10%)**
OVERALL TOTALS	**378**	**62(16%)**	**214(57%)**	**102(27%)**

Note: Review Applications may raise more than one issue for review, therefore, the above numbers may not correlate with the number of Review Applications filed or Decisions rendered. Due to rounding the total percentages may not equal 100 percent.

FINANCIAL STATEMENT

There is no regulatory requirement for the WHSCRD to submit a separate, audited financial statement.

Summary of Expenditures and Related Revenue for fiscal year ending March 31, 2014 (UNAUDITED)

	2013-14	2013-14 Estimates	
	Actual	Amended	Original
	$	$	$
8.1.01. Workplace Health, Safety and Compensation Review			
01. Salaries	680,196	745,400	728,500
02. Employee Benefits	3,635	4,500	2,500
03. Transportation and Communications	40,375	44,000	30,000
04. Supplies	23,314	26,700	22,500
05. Professional Services	176,642	325,900	348,000
06. Purchased Services	110,428	120,500	120,500
07. Property, Furnishings and Equipment	3,719	5,900	4,000
	1,038,309	1,272,900	1,256,000
02. Revenue - Provincial	(1,275,672)	(1,256,000)	(1,256,000)
Total: Workplace Health, Safety and Compensation Review	(237,363)	16,900	-

Source: ***Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund for the Year Ended 31 March 2014***

REVIEW COMMISSIONERS FOR 2013-14

Marlene Hickey, Chief Review Commissioner

Ms. Hickey is a resident of Mount Pearl. She has been a member of the provincial public service since 1987. Ms. Hickey served as Director of the Workplace Health, Safety and Compensation Review Division since 1992 and also held the position of Director of Policy and Planning with the Labour Relations Agency from July 2005 to 2006. In 2006, she facilitated the efforts of the *Statutory Review Committee on the Workplace Health, Safety and Compensation Act.*

Keith Barry, Review Commissioner

Mr. Barry is a resident of St. John's. He is a retired provincial public servant, having served in various government departments over a 44-year career. Most recently, Mr. Barry served as Vice-Chair of the Public Service Commission. Prior to that he was the Director of Financial Administration for the Royal Newfoundland Constabulary and occupied various senior financial positions with the Fisheries Loan Board, Executive Council, etc. Mr. Barry was honoured with a fellowship with the Society of Management Accountants of Canada in 2004, and in 2006 was named Gonzaga Alumnus of the year. Mr. Barry's appointment as Review Commissioner expired in July 2013.

Peter Budgell, Review Commissioner

Mr. Budgell is a resident of Bishop's Falls, NL. He has served as Manager of the Exploits Community Employment Corporation since 2000 as an advocate for providing employment opportunities for persons with developmental or cognitive delays. Mr. Budgell was employed with the Exploits Valley Integrated School Board working with youth regarding career exploration opportunities. Mr. Budgell is the former Provincial Director of NL Crohn's & Colitis Foundation of Canada. He also has a history of extensive community involvement through groups such as the Minor Hockey Association, Kinsman Club, Knights of Columbus, Exploits Youth Justice Committee and as a former Trustee with the Nova Central School Board.

Margaret Blackmore, Review Commissioner

Margaret Blackmore is a resident of Grand Falls-Windsor. Margaret attended Saint Francis Xavier University in Nova Scotia where she completed a Bachelor of Arts. She also attended the University of New Brunswick in Fredericton where she obtained a law degree. Margaret practiced law for a period of time in Halifax with the firm of Stewart McKelvey before returning to Newfoundland and Labrador in 2007. She now practices in Grand Falls-Windsor at the firm of Blackmore Law Office.

REVIEW COMMISSIONERS (CONTINUED)

Gordon Murphy, Review Commissioner

Gordon Murphy is a resident of St. John's. He is a retired career provincial public servant, having served all his 36 years with the provincial Department of Transportation and Works (and its various derivatives). He has held a number of positions in the Department, most recently as Director of Human Resources and as a member of the Department's Executive Committee. He has served as a member or as Chair of multiple Committees and Boards, most recently as Chair of the Management Classification Appeal Board. He has also worked as a consultant in human resources and labour relations within the Province.

E. Bruce Peckford, Review Commissioner

Mr. Peckford is a resident of St. John's. He is a retired provincial public servant who has held several senior positions with the public service, concluding with Deputy Minister of Social Services. He also held the position of Executive Director of Finance and Administration with the Workplace Health, Safety and Compensation Commission. In 2005, Mr. Peckford served as Chair of the *Statutory Review Committee on the Workplace Health, Safety and Compensation Act*. Mr. Peckford is the past Chair of the Eastern School District and the past Chair of the Historic Sites Association of Newfoundland and Labrador and a former Board member of the Canadian Cancer Society, Newfoundland and Labrador Division.

Lloyd Piercey, Review Commissioner

Mr. Piercey is a resident of Fortune, NL. He has a Bachelor of Arts/Bachelor of Education with Memorial University of NL. Most recently he served as Special Assistant the former Member of Parliament for Random-Burin-St. George's. Mr. Piercey is a past Academic Department Chairperson for Eastern College, Burin Campus and facilitated the exploration of training and work options for displaced fishery workers following the cod moratorium. He has also worked as an Adult Basic Education Instructor, Continuing Education Coordinator, at Eastern College and as Coordinator for Job Corp. Program. Mr. Piercey has served on various committees with Eastern College and has served in various executive positions for groups and committees within the community.

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